IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Court's order whether the case is or not approved for reporting

(Chapter VIII, Rule 32(2)(b)

Description of Case

Crl. Misc Application No. 293 of 2003

Date of decision:- 17-6-2006

~~**A.F.R. (Approved for Reporting)**~~

Not approved for reporting

Date:- 17-6-2006 Initials of Judge

Note:- Bench Reader will attach this at the top of the first page of the judgment when it is put u p before the Judge for signature.

HIGH COURT OF UTTARANCHAL AT NAINITAL

Criminal Misc. Application No. 293 of 2003

1. Mohd. Anees S/o Mohd. Haneef
2. Mohd. Saleem S/o Mohd. Haneef
3. Mohd. Haneef S/o Alla Jiya
4. Smt. Masooda Begum
   W/o Mohd. Haneef
   All R/o Mohalla Ashraf Ali
   Near Barlowali Masjid
   Kasba & P.S. Gangoh
   District Saharanpur, U.P. ....Applicants

Versus

1. State of Uttaranchal
2. Smt. Shabnam Parven
   D/o Shri Iftekhar Hussain
   C-13 Hydle Colony
   Dholipur P.S. Vikar nagar
   District Dehradun ....Respondents

Dated:- 17th June, 2006

Mr. Ramji Srivastava learned counsel for the applicants.
Mr. A. Rab learned Addl. G.A. for the State.

Hon'ble J.C.S. Rawat, J.

1. The petition under section 482 Cr.P.C. has been filed for quashing the summoning order dated 11.9.2003 passed by the Special Judicial Magistrate IInd Dehradun in Criminal case No. 2811/2003 under sections 498A, 323, 504, 506, IPC & section 3/4 D.P. Act.

2. Brief facts of the case according to the petition are that the marriage was solemnized between the applicant no.2-Mohd. Saleem and the respondent No. 2-Shabnam Parveen on 3.3.2002 according to the rites and custom of Muslim Law. On 25.3.2003 the applicant no. 2 gave divorce to his wife by saying three times "Talak" and on the same day both the parties entered into a deed, in which it was decided that both the parties would not have the right to claim anything against each other. Thereafter, on 19.06.2003 the respondent no. 2 lodged

an FIR against her husband and his family members with the allegations that they were demanding the dowry and in that connection she was harrassed and tortured by the applicants. The police investigate the matter and submitted the chargesheet against the applicants on 7.8.2003. Thereafter, the Magistrate summoned the present applicants vide order dated 11.09.2003. Feeling aggrieved by this, the present petition has been filed.

3. Heard Sri Ramji Srivastava learned counsel for the applicants and Sri A. Rab. Addl. G.A. for the State. Today, there is no representation on behalf of the respondent no.2. However, the counter affidavit has already been filed on behalf of the respondent no. 2.

4. Learned counsel for the applicants contended that the applicant no. 2 has given divorce to his wife-shabnam Praveen on 25.03.2003 according to Muslim Law by saying three times “Talak” and thereafter the parties have entered into a deed and it was decided that the parties will have no right to claim anything against each other. The said deed was duly attested by the notary Mohd. Ilyas on 25.03.2003. It was contended that the respondent No. 2 is not legally wedded wife of the applicant no. 2 after the execution of the deed dated 25.03.2005. The FIR was lodged on 19.06.2003 when the respondent no. 2 was not legally wedded wife. Learned Addl. G.A. refuted the contention. According to the FIR and the chargesheet the marriage was solemnized between the parties on 03.03.2002. The applicants have taken a case of divorce that she was not a legally wedded wife. Now, it has be seen whether the factum of the “Talak” deed dated 25.03.2003 is correct or not. It has been filed alongwith the petition.

It has been held by the Apex Court in **State of Orissa Vs. Suraj Kumar 2006(2) SCC(Cri) p/272 & Chand Dhawan Vs. Jawahar Lal 1992 SCC(Cri) p636** that when the materials relied upon by the party are required to be proved, no inference can be drawn on the basis of those materials to conclude the complaint to be unacceptable. The court should not act on the annexures to the petition under section 482 Cr. P.C. which cannot be termed as evidence without being tested and proved. This controversy can only be decided by the trial court. As a matter of fact, the applicants have taken a plea which may be their defence at the time of trial. The trial court can only evaluate the evidence of the applicants. It is a question of fact, which has to be decided during the trial. This Court cannot evaluate the disputed facts of the case. This Court cannot decide as to whether the evidence is reliable or not. It has been held by the Hon'ble Apex Court in **M. Naraytandas Vs. State of Karnataka 2004 Cri. L.J. p/822** that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases; that the court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint and the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the Court to act according to its whim or caprise. It has also been held in **State of Karnataka Vs. M. Devendrappa & another 2002 (2) SBR p/151** that while exercising jurisdiction under section 482 Cr. P.C., the High Court would not ordinarily embark upon an enquiry whether the evidence in question is reliable or not or whether on a reasonable appreciation of it accusation would not be sustained. That is function of the trial court..

5. It is not permissible for the High Court to look into materials, the acceptability of which is essentially a matter of trial. While exercising jurisdiction under section 482 Cr.P.C., it is not possible for this Court to act as if it is a trial court. **{State of M.P. Vs. Awadh Kishore Gupta and others SCC (Cri) 2004p/353}.**

6. It was further contended that on 10.06.2003 at about 11am the father and brother of respondent no. 2 committed 'marpeet' with the applicant no. 2 and also threatened to kill him. Thereafter, the applicant no. 2 filed a complaint before the 4th Addl. CJM, Saharanpur under section 323, 504, 506, IPC on 12.06.2003. This proceeding is still going on against the father and brother of the respondent no. 2 It was further contended that the FIR dated 19.06.2003 is a counter blast of the said case. It has also been alleged in the present petition that the respondent no. 2 had also filed an application for maintenance under section 125 Cr. P.C. before the court below and the said application was pending till the date of filing the present petition. The respondent no. 2 has also filed a simultaneous application under section 125 Cr. P.C. alleging therein that the applicant no. 2 had neglected to maintain her and he is not paying the maintenance. In view of the said averment made in the application filed under section 125 Cr.P.C., it cannot be held that the FIR is the counter blast of the prosecution launched by the applicants against her father and brother. It is also pertinent to mention here that it is admitted to the

parties that the respondent no. 2 was a legally wedded wife of applicant no.2 It is also on record that she is not living with her husband and she has filed an application under section 125 Cr.P.C. The present complainant/FIR seems to be a natural consequence of the acts committed by the applicants. It has been held by the Apex Court in **State of Orissa Vs. Suraj Kumar 2006(2) Scc(Cri) p/272** that when the complainant had lodged the report and investigating officer had collected the evidence and came to the conclusion that prima facie case is made out and the magistrate had taken the cognizance on such evidence, then the mala-fide of the informant becomes secondary. It is the material collected by the I.O. and the evidence adduced before the court which decides the fate of the accused. The allegations of mama-fide against informant are of no consequence and are of no consequence to quash the proceeding. This fact leads me to take and inference that the FIR is not a mala-fide.

7. In view of the above, the petition lacks merit and is dismissed. All the pending miscellaneous applicant(s) in this case, if any, shall stand disposed of accordingly.

(J.C.S. Rawat, J.)

Dated 17.06.2006
LSR